



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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From: The Registrar, Supreme Court of Appeal

Date: 27 May 2010

Status: Immediate

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S L NAIDOO V ABSA BANK LTD

The Supreme Court of Appeal (SCA) today dismissed an appeal against an order of sequestration granted by Gyanda J in the KwaZulu-Natal High Court, Durban. It held that a credit provider need not comply with the procedure provided for in s 129(1)(a) of the National Credit Act 34 of 2005 ('the Act') before instituting sequestration proceedings against a debtor because such proceedings are not proceedings to enforce a credit agreement.

The appellant, Mr Selvan Laban Naidoo, contended that it was not competent for the respondent, Absa Bank Ltd, to have instituted proceedings for his sequestration before complying with the procedure provided for in s 129(1)(a) of the Act. (Section 129 deals with required procedures before debt enforcement.) It was submitted on behalf of the appellant that section 129(1)(a) read with s 130(3) of the Act should be interpreted to cover circumstances relating not only to the enforcement of a credit agreement but also to sequestration proceedings as the unpaid claims which are the subject of the sequestration application arise from credit agreements to which the Act applies. (Section 130(3)(a) provides that in 'any proceeding' concerning credit

agreement the procedure provided for in s 129 must, where appropriate, be followed.)

The SCA reasoned that from the language employed in s 130(3)(a), the proceedings referred to there do not extend the reach of s 129 to proceedings that do not involve the enforcement of a credit agreement, it simply provides that where a credit provider decides to institute proceedings to enforce the agreement, he may do so after having complied with the procedure in s 129(1)(a).

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